REMARKS

Applicants wish to thank the Examiner, Ms. Alicia Chevalier, for her courtesies extended during the telephonic interview of March 11, 2004. During the telephonic interview, all pending claims were discussed. Although no agreement was reached with respect to the patentability of the pending claims, the Examiner did agree to favorably consider claims that encompassed all the limitations of claims 1, 2, 3, and 5, along with the removal of any alleged new matter. As a result, where appropriate, Applicants have amended the independent claims along the lines suggested by the Examiner. As a result of this agreement, where appropriate, Applicants have amended the independent claims along the lines suggested.

Claims 1-17 are pending. Claims 4-8, and 10-17 have been amended, where claims 5 and 8 have been placed into independent form. Claims 1-3, and 9 have been canceled. No new matter has been added by way of this amendment. Reconsideration of the application is respectfully requested.

Claims 1-7, 10-17 stand rejected under 35 U.S.C. 112, 1st ¶, as failing to comply with the written description requirement. According to the remarks in the Office Action:

> Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added limitation "uppermost portions of respective protrusions defining contact points only at locations where said top sheet comes into contact with a [wearer's] skin" is new matter. The limitation is constructed to mean that only the uppermost portions of the protrusions are in contact with the [wearer]. The Examiner is unable to find support for this limitation in the specification or the drawings.

Applicant's response on page 5, the last paragraph, alleges that support may be found on page 11, line 20 thru page 12, line of the specification. Page 11, line 20 thru page 12, line of the specification recites:

> "The load in compression of the protrusions 5, i.e., a LC value thereof preferably falls between 0.05 and 0.5. The LC value indicates the behavior of the protrusions under compression, and is measured by use of the texture feel tester, Katotec's KES. If their LC value is smaller than the lowermost limit of the defined range, the protrusions will be readily crushed by the pressure of the body of wearers. If their LC value is larger than the uppermost limit of the defined range, their compressive resistance will increase and therefore the protrusions will be hard."

This section of the specification only discusses how different load compressions will affect the top sheet, i.e. if the LC is too [small] the protrusions will be crushed and alternatively if the LC is too large the protrusion will feel hard. The section does not recite anything about how or where the top sheet contacts the wear. As such the limitation is deemed to be new matter and should be removed from the claims.

Claims 1, 11, 15 and 17 recite, "so that apexes of respective protrusions extend toward a wearer's skin beyond the apexes of said fine convex portions to define contact points which contact the wearer's skin." The specification does not disclose "contact points" which are defined the "apexes of respective protrusions extending toward a wearer's skin beyond apexes of said fine convex portions," therefore this limitation is considered new matter. The passage, specification page 11, lines 5-15, upon which Applicant [contends] gives support for the new limitations does not discuss "contact points." The passage Applicant has pointed out merely discusses that the protrusions will not function correctly if their height is below the lower limit of the protrusion height range. Furthermore, the only [discussion] of a "contact area" in the specification is in regard to the fine convex portion, see page 6, line 19.

Claim 13 has been amended to now recite "a height of each protrusion being in a range greater than 0.0837 mm to 1.0 mm." The specification does not disclose that the "protrusion height is greater than 0.0837 mm to 1.0 mm," therefore this limitation is considered new matter. The specification only has support for protrusion height ranges of 0.05 mm to 1.0 mm *(page 11, line 6)* and 0.35 mm to 0.55 *(page 16, line 7)*.

The new matter should be deleted.

> Claims 14-17 recite, "said fine convex portions including first fine convex portions defined by exposing a part of a first particulate material having a first grain size and second fine convex portions defined by exposing a part of a second particulate material having a second grain size which is greater than said first grain size." The specification does not discloses that the fine convex portions includes..."a first fine convex portions" with a "first grain size" and "a second fine convex portions" with [a] "second grain size," therefore this limitation is considered new matter. The specification only has support for the top sheet [containing] two different types of particulate material comprising a blending of 1 micron particles and 10 micron particles in a ratio of 40:60 (*page 7, line 25 bridging page 8, line 8*). Furthermore, the specification only has support for large and small size particles (*specification page 7, lines 10-18*), not first and second grain size.

In response to these several objections, Applicants have amended all of the independent claims to remove the alleged new matter. Accordingly, Applicants respectfully assert that the amended claims do not contain new matter and therefore, reconsideration and withdrawal of the rejection are respectfully requested.

Claims 1, 2, 5, 7, 10, 11, 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,327,730 to *Sorenson* in view of U.S. Patent No. 5,660,788 to *Gray* et al. Applicants respectfully assert that this rejection is traversed.

The independent claims have been amended to recite the limitations "at least two differently sized particulate materials having a mean particle size in a range of between 0.1 μm and 30 μm, each mean particle differing in size by at least 9 μm" and/or "a mean height of the protrusions from the surface of the top sheet is in a range between 0.05 mm and 1.0 mm."

Sorenson discloses a disposable diaper having a textured top sheet of thermoplastic material. *Gray* et al. relates to a fluid pervious top sheet that is suitable for use on an absorbent article. Applicants respectfully assert that the references, neither individually nor in combination,

teach or suggest the present claimed invention. That is, "at least two differently sized particulate materials having a mean particle size in a range of between 0.1 μm and 30 μm, each mean particle differing in size by at least 9 μm" and/or "a mean height of the protrusions from the surface of the top sheet is in a range between 0.05 mm and 1.0 mm." In view of these differences, Applicants respectfully assert that each of the amended independent claim is patentable over the combination of the cited references and therefore, reconsideration and withdrawal of the rejection are respectfully requested.

In view of the patentability of independents claims 5, 8, and 11-17 for the reasons set forth above, dependent claims 4, 6-7, and 10 are also patentable over the cited references.

Based on the foregoing amendments and remarks, this application should be in condition for allowance. Early passage of this case to issue is respectfully requested. However, if there are any questions regarding this Response, or the application in general, a telephone call to the undersigned would be appreciated since this would expedite the prosecution of the application for all concerned.

Dated: April 12, 2004

Respectfully submitted,
By _____
Alphonso A. Collins
Registration No.: 43,559
DARBY & DARBY P.C.
P.O. Box 5257
New York, New York 10150-5257
(212) 527-7700
(212) 753-6237 (Fax)
Attorneys/Agents For Applicant